

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 4, 1008

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**Re: Docket No. 458-08-1705; Texas Alcoholic Beverage Commission,
and Protestants v, Shashi Chauhan Tanwar., d/b/a Star Food Mart
(TABC C568326)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert F. Jones, Jr.", written over a light blue circular stamp.

Robert F. Jones, Jr.

RJ/dd
attachments

**SOAH DOCKET NO. 458-08-1705
TABC CASE NO. 568326**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
CITY OF FORT WORTH POLICE	§	
DEPARTMENT, MAYOR PRO TEM	§	
KATHLEENHICKS,	§	
REPRESENTATIVE MARC VEASEY,	§	
NEAR EASTSIDE	§	
NEIGHBORHOODASSOCIATION,	§	
EASTSIDE SECTOR ALLIANCE,	§	
UNION GOSPEL MISSION OF FORT	§	
WORTH, DAY RESOURCE CENTER	§	
FOR THE HOMELESS, PAULOS	§	
PROPERTIES LLC, RIVERSIDE	§	
KENNEL, SANDERSON CREEK	§	
BONSAI, OFFICER E. B. ADCOCK,	§	
Protestants	§	
	§	
VS.	§	OF
	§	
RENEWAL APPLICATION OF	§	
SHASHI CHAUHAN TANWAR	§	
d/b/a STAR FOOD MART	§	
PERMIT NO. Q629007 &	§	
LICENSE NO. BF-629008	§	
Respondent	§	
	§	
TARRANT COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

Shashi Chauhan Tanwar d/b/a Star Food Mart (Respondent) applied for a renewal of her wine only package store permit and beer retailer's off-premise license. The application was protested by the City of Fort Worth Police Department, Mayor Pro Tem Kathleen Hicks, Representative Marc Veasey, Near Eastside Neighborhood Association, Eastside Sector Alliance, Union Gospel Mission of Fort Worth, Day Resource Center for the Homeless, Paulos Properties LLC, Riverside Kennel, and Sanderson Creek Bonsai (the Protestants). The

PROPOS.

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hearing. R spondent appear thr ee person an through thy Griffith
The City Worth ol Departmen (FW) D) appeared through ttorne Dean
left ith. Th ther Protestants appear p The hearing ded ,pril- 200
The record closed on Jun 00

No one has ever contested and the matters are addressed in the index of fact and conclusions of Law.

II. EVIDENCE

Respondent opened 'tar and Mart' the spring Respondent sued
only: packaging store term Q 9007 beer retailer off-premise B 629008 May
006 'tar and Mart' located 99 East Lancaster Fort Worth Tarrant County T
The premises at the of Riverside Lan od Mart ated the
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On October 19, 2007, Petitioner Texas Alcoholic Beverage Commission informed Respondent that it had received a "place and manner" protest of the renewal of Respondent's license and permit. A number of the protestants appeared and testified at the hearing. Their testimony and concerns are summarized below.

A. Community Protestants

Flora Brewer

Flora Brewer appeared as the president of the Near East Side Neighborhood Association (the N.A.) and on her own behalf. Ms. Brewer has been involved with the N.A. since 2001 when it was formed. She owns two businesses in the area. The N.A. consists of eight businesses, five social service agencies, and other individual property owners and single family residents in and around the Lancaster corridor. The N.A. has operated since 2001 with the goal to improve the quality of life in the area and make the community safer, cleaner, and more up-beat. The N.A. meets regularly and through fund-raising among the members pays an agency to pick up trash on the streets. The N.A. works with the city's code enforcement office, parks and recreation, transportation and public works, with TxDOT, to control the neighborhood.

Ms. Brewer testified that a large homeless and transient population lives in the immediate area at local shelters. According to Ms. Brewer, over 25 percent of those residing in the shelters identify alcohol and drug addiction as a primary or secondary cause of their homelessness. The N.A. members have observed over many years that alcohol sold in the area is consumed primarily by chronic alcoholics who are sheltered at the local agencies. This creates severe problems such as drinkers congregating together, trash, public intoxication, public urination, and criminal trespass. As a result, the neighborhood cannot be developed as it should be with appropriate retail for a large community.

Ms. Brewer testified that A-1 Food Mart across the street from Star Food Mart had lost its liquor license in 2007. Her research showed that while Star Food Mart increased its calls for

service in the 2006-2007 time period by 15 %, A-1 reduced its calls by 70% after losing its license. Star Food Mart increased the number of calls for service for disturbances, intoxicated persons, robberies, investigations, and suicide attempts, including incidents of persons with a weapon in 2007-2008. Without alcohol, A-1 reduced assaults to only one from a high of 24, disturbance calls were reduced by half, investigation calls by two-thirds, and calls for accidents, theft and suicide attempts were eliminated. A-1 has become proactive and maintains control of its property. A-1 takes extra steps to control its premises. Ms. Brewer related that A-1 is working hard to become profitable even though they are at a competitive disadvantage with Star Food Mart.

2. Bob Gallant

Mr. Gallant, a member of the N.A., owns East Side Marble & Granite which is located at 1517 East Lancaster, approximately two blocks west of Star Food Mart. Mr. Gallant has observed individuals enter Star Food Mart and exit with 40 ounce bottles of beer. Mr. Gallant testified that, because of the sale of alcohol in the area, people are drunk, bottles and broken glass litter the neighborhood, and customers do not want to pull into his business's parking lot. In the past, the N.A. has hired people to clean the neighborhood. At one point, the N.A. used a "bottle bounty" in an attempt to clean up the bottles and sponsored an ordinance requiring the sale of cans rather than bottles to reduce the trash and the threat of broken glass.

3. Daniel Hammack

Mr. Hammack has resided at 1634 Stella Street, three or four blocks due south of Star Food Mart, for 22 years. Mr. Hammack testified that he and his family are "bombarded every day" by the homeless and their alcohol. His family has to pick up empty bottles every day and run off persons who are urinating in the yard. He has made numerous complaints to the police about the fighting, drinking, and public intoxication. He requested that Star Food Mart's permit and license not be renewed.

4. Beckie Woch

Ms. Woch runs the Salvation Army shelter located at 1855 East Lancaster near the Star Food Mart. The Salvation Army works to help alcoholics stop using alcohol and because of this the Salvation Army does not support the consumption of alcoholic beverages. The Salvation Army serves 600 people a day. According to Ms. Woch, 17% of those people have a drinking problem, 20% have a drug problem, and 26% have mental health problems revolving around drug and alcohol use. The proximity of Star Food Mart to the Salvation Army is a temptation that some of the Salvation Army's clients cannot resist. She related that, every day, she sees someone exit Star Food Mart with alcohol and, by the time they return to the Salvation Army, they have finished drinking. As a consequence, the Salvation Army expends over \$155,000.00 a year for security, which could otherwise be spent on the rehabilitation of its clients. Ms. Woch asked for protection for "our people who are rehabilitating."

5. Bruce Frankel

Mr. Frankel is the executive director of the Day Resource Center for the Homeless which is located at 1415 East Lancaster. The Center provides day services to the homeless who find nighttime shelter in the Union Gospel Mission or the Salvation Army. The Center's clients are chronically homeless and usually have some sort of a mental health, drug or alcohol, or physical condition. The Center uses rehabilitation to help its clients end their homelessness. Mr. Frankel related that his clients go to Star Food Mart for alcohol. People congregate on the corner near the Center and drink beer. The Center has to employ a full time off-duty Fort Worth police officer for security. The security officer makes regular sweeps around the building to ask people who are loitering with open containers to leave. Mr. Frankel believes a homeless alcoholic "having a store that sells alcohol within walking distance" is counterproductive.

In addition to these local residents, two police officers who have patrolled the Lancaster area around Star Food Mart testified.

6. Officer Anthony Coulter

FWPD Officer Coulter is a nine-year veteran who patrolled the Star Food Mart neighborhood from 2000 to August 2006. He responded to calls for panhandling, loitering, assaults, and criminal trespass at Star Food Mart, A-1, and at the TxDOT property. Officer Coulter stated that A-1 took a stand against loitering and consumption on its premises. At A-1, the attitude was, "we do not want anyone loitering or causing problems." A-1's proprietors would call and have all the people removed. In contrast, he described Star Food Mart as "lackadaisical." They allowed some people to remain on the premises. They were also selective, requesting Officer Coulter to remove some but not all of the people loitering on the premises.

Officer Coulter opined that, in this neighborhood and knowing the clientele, Star Food Mart has a responsibility for its surroundings and accountability for its premises. He asserted that Star Food Mart has to be aware of and accountable for things that did not occur on its premises. He suggested that Respondent adequately light the premises, provide the police with emergency contact numbers, use secure fencing, and secure all doors. Officer Coulter opined that a clerk by himself making cash transactions should not leave the counter and exit the store to chase off a loiterer; he should, instead, call the police. He acknowledged that if the loiterer was known to the clerk, it would probably be safe to take action by himself.

7. Officer David Crim

FWPD Officer Crim has 11 years experience patrolling the Lancaster corridor, which includes Star Food Mart. He took over Officer Coulter's beat in January 2008. He believes that it "would be best" not to renew Star Food Mart license, because most of the neighborhood population is homeless, with many alcoholics who intoxicate themselves frequently. The drunkenness leads to fights and assaults. Officer Crim related that the "weapon of choice" in these fights is a 40-ounce bottle, such as are sold by Star Food Mart.

Officer Crim opined that, based upon his observations, the majority of alcohol purchased

in the area is purchased at Star Food Mart. Officer Crim has spoken to the employees at Star Food Mart, but never to Respondent. He noted that there are multiple thefts at Star Food Mart; that people loiter on the premises for the purpose of begging; and that intoxicated individuals remain on the premises and cause problems. Officer Crim testified a lot of loitering is allowed or tolerated at Star Food Mart. Officer Crim opined that the Star Food Mart's employees should know their customers very well, as in a local bar, and when a person who is intoxicated walks in, he should not be sold alcohol.¹ Officer Crim opined it was the Star Food Mart's employees' responsibility to recognize what is happening outside on the premises and respond to the situation.²

B. Fort Worth Police Department Protest

FWPD Officers Ed Adcock and Jesse Loera were responsible for reviewing the police department's records and formulating the protest letter that department served on the Commission. Officer Adcock began the process, and after his retirement, Officer Loera continued the task.

1 Officer Adcock

Officer Adcock is currently a reserve officer for FWPD, and is a former vice officer with seven years experience. He composed the original protest letter submitted to the TABC. Officer Adcock was notified by the TABC that several neighborhood groups had protested renewal of Star Food Mart's permit and license. In addition, the local police divisional commanders and neighborhood groups requested FWPD to protest Star Food Mart's license. FWPD normally relies on neighborhood groups, neighborhood patrol officers, divisional commanders, and information from the street in determining whether to initiate an investigation and protest. Officer Adcock reviewed a large volume of police reports and calls for service which he believed occurred on the Star Food Mart premises. After his review, he decided that Respondent

¹ See Fort Worth Exhibit A, Tabs 10 & 19.

² Officer Crim related an example of an incident in which he observed the sale of cocaine from a vehicle parked at the Star Food Mart gas pump. What Officer Crim found interesting was the vehicle sat at the gas pump for a time without purchasing gas, but was not asked by Star Food Mart to buy something or move along.

demonstrated "willing toleration" for people congregating on the premises and drinking. This evidenced, in his opinion, a lack of concern or an unwillingness to comply with the Alcoholic Beverage Code. He opined that Respondent and her employees lost control of the premises. As a consequence, Officer Adcock believed the license and permit should not be renewed.

After the protest was made, Officer Adcock visited Star Food Mart to speak to Respondent or an employee. In his experience with Star Food Mart, Respondent was "never there," and he mainly had contact with her son, Dhiraj Tanwar. During the premise visit, he advised the employee that if there was a problem, such as a person exhibiting any sign of intoxication, he should call the police first and not attempt to confront the person directly. Officer Adcock wanted Respondent to "set the tone for the business" and provide for her employee's safety. Officer Adcock noted that there continued to be problems at Star Food Mart after the protest.

2. Officer Jesse Lorea

Officer Lorea has been a FWPD officer for 15 years. He is familiar with the Star Food Mart. He testified that the location has excessive calls for service, criminal activity, and officer-initiated reports. Officer Lorea's primary complaints concerning Star Food Mart are drugs and the secondary effects of alcohol. In Officer Lorea's opinion, the license and permit should not be renewed. Officer Lorea stated that the protection of the general welfare of the citizens of Fort Worth is the mission of FWPD. He acknowledged that FWPD does encourage calls for police service regarding incidents or crimes that are committed on any property. In Officer Lorea's opinion, Star Food Mart has unduly burdened Fort Worth's citizens and its resources, considering its non-compliance and the lack of cooperation that Respondent has shown until an administrative action was imminent.

Officer Lorea made a compliance inspection at Star Food Mart on April 14, 2008. He observed three individuals on the premises drinking an alcoholic beverage. They remained unmolested by Respondent's employees for five or six minutes. Officer Lorea observed a man he believed was an employee of Star Food Mart come out of the store. The man had a broom

and a bucket and was picking up trash. The sweeper looked at the three who were drinking but did not approach them. The sweeper told Officer Lorea that he worked for the store doing odd jobs. Officer Lorea spoke to Ad Abdul, the store clerk. Mr. Abdul stated that he usually does a warning; he just did not have a chance to come outside as he was busy.³ Officer Lorea emphasized that this inspection was made well after the date of the protest. He also observed that other violations have occurred after the protest, although calls for service have declined since the protest.

3. Fort Worth Police Documents

FWPD submitted lengthy calls for service (CFS) logs and numerous police reports, covering May 1, 2006 to January 2, 2008.⁴ Generally speaking, the origin of a CFS received by FWPD is identified by the name the caller gives (if a name is given) and the telephone number the call was made from. The telephone number identification is automatic to the FWPD system (similar to "caller ID") and its accuracy does not rely on a caller's veracity. The CFS logs are a database, and FWPD was able to sort the CFS by telephone number and learn from what telephone numbers CFS assigned to Star Food Mart originate. The CFS can also be sorted by type of call such as an assault, a call for an ambulance, or a disturbance, and the number of different types of CFS can be counted.

During May 1, 2006 to June 1, 2007 there were 260 CFS. Seventy-four calls were made from the payphone on Star Food Mart's premises. Seventy-two calls were made from Star Food Mart's business telephone. Twenty-two were made by Suzette Watkins, one of the Protestants.⁵ During June 2, 2007 to July 7, 2007 there were 47 CFS. Eight calls were made from Star Food Mart, six from the payphone, and six from Ms. Watkins.⁶ During July 7, 2007 to January 2, 2008 there were 172 CFS. Thirty-four calls were made from the payphone, 18 from Star Food Mart, and 16 from Ms. Watkins.⁷

³ Fort Worth Exhibit B, Tab 3.

⁴ Fort Worth Exhibit A covers May 1, 2006 to June 1, 2007 and July 7, 2007 to January 2, 2008; Fort Worth Exhibit B covers June 2, 2007 to July 7, 2007.

⁵ Fort Worth Exhibit A, Tab 4, pp. 49-50. Protestant Watkins was unable to attend the hearing

⁶ Fort Worth Exhibit B, Tab 1, pp. 2-3.

⁷ Fort Worth Exhibit A, Tab 3, pp. 4-5.

Generally speaking, the CFS logs, and the accompanying police reports, identified the location of the CFS as "Star Food Mart" or "1799 E. Lancaster Ave." This proposal has mentioned the "TxDOT property" located to the north and west of Star Food Mart. Under the FWPD system, CFS relating to problems on the TxDOT property are also assigned the address "1799 E. Lancaster Ave." Accordingly, the police reports were reviewed individually to determine whether or not the problem to which FWPD was dispatched took place on the Star Food Mart premises, the TxDOT property, or both. The analysis of FWPD reports in this proposal will refer only to incidents occurring on the Star Food Mart premises.

a. Alcohol Offenses

Ten arrests were made at Star Food Mart for persons consuming alcohol on the premises. The arrests took place in July 2006, and April, June, March, August, October, and November 2007.⁸ FWPD officers filed eight reports from September to December 2007 concerning violation of the Fort Worth ordinance prohibiting consumption of alcohol within 1000 feet of a homeless shelter. Each of the reports involved the citation of one or more persons consuming alcohol on the Star Food Mart premises.⁹ In total, 16 persons were cited. On July 28, 2007, an officer was on the premises and observed a suspect carrying boxes around the store. The officer observed that the suspect was intoxicated. The suspect stated he worked at the premises and was paid in cash at the end of the day.¹⁰

Six arrests were made for public intoxication on the premises from July 2006 to September 2007.¹¹ In one instance, the officer was dispatched to Star Market (the complainant is unknown) with respect to an intoxicated person. The officer found suspect William Whatley

⁸ Fort Worth Exhibit A, Tab 24, Report 07-25897 & Report 06-75749; Tab 13, Report 07-98106, Report 07-129204, Report 07-139578, & Report 07-128406; Fort Worth Exhibit B, Tab 5, Report 07-71061; Tab 3, Report 08-43563.

⁹ Fort Worth Exhibit A, Tab 14.

¹⁰ Fort Worth Exhibit A, Tab 5, Report 07-88761.

¹¹ Fort Worth Exhibit A, Tab 13, Report 07-81449, Report 07-88725, & Report 07-104509; Tab 19, Report 06-82547, Report 06-93529, & Report 07-58325.

passed out on the floor of the Star Market near the beer cooler.¹² On January 7, 2007, an officer observed a person he believed to be a "known habitual drunkard" enter Star Market and exit with two cans of beer. The officer spoke to Singh Mohan (Respondent's husband) who admitted to selling the beer. The officer told Mr. Mohan "he is not suppose to sale beer to an Habitual Drunkard (*sic*)" to which Mr. Mohan replied, "But that is most of my customers." The officer did not cite Mr. Mohan. The matter was forwarded to TABC. Mr. Mohan testified that the officer said he should not sell to "homeless people," not "habitual drunkard."¹³

Police officers driving by the Star Food Mart premises have arrested a number of persons they observed urinating on the premises building.¹⁴ Respondent's employees reported six instances from June to October 2006 in which beer was stolen by a putative customer of Star Food Mart.¹⁵ The Fort Worth police documented a number of criminal trespass complaints initiated by Respondent's employees.¹⁶ For example, in June and July 2006 the police were called to Star Food Mart three times with respect to a panhandler named Karla B.¹⁷

b. Other Offenses

There were two reported assaults at the premises, on July 23, 2006 and November 2, 2007. With respect to the 2007 assault, Respondent's husband, Singh Mohan, told police he had sold the suspect beer twice earlier in the day (it was 7:46 p.m.), and refused to sell him any more. The suspect began cursing Mr. Mohan and, when told to leave, the suspect struck Mr. Mohan.¹⁸

There were two reported incidents of aggravated assault on the premises, on November 14, 2006 and October 8, 2007. The 2007 assault involved two men who had purchased a beer at

¹² Fort Worth Exhibit A, Tab 19, Report 06-82547.

¹³ Fort Worth Exhibit A, Tab 20, Report 07-2452.

¹⁴ Fort Worth Exhibit A, Tab 26, Report 06-65813; Tab 11, Report 07-83478 & Report 07-133131; Fort Worth Exhibit B, Tab 5, Report 07-71061.

¹⁵ Fort Worth Exhibit A, Tab 24, Report 06-67398; Tab 25, Report 06-72890, Report 06-91042, Report 06-93832, Report 06-116371, & Report 06-116425.

¹⁶ Fort Worth Exhibit A, Tab 24, Report 07-61780, Report 07-51292, & Report 06-56495; Tab 12, Report 07-101933.

¹⁷ Fort Worth Exhibit A, Tab 24, Report 06-74071, Report 06-84049, & Report 06-85005.

¹⁸ Fort Worth Exhibit A, Tab 22, Report 06-84650; Fort Worth Exhibit A, Tab 10, Report 07-131126.

the premises. They went behind the building, drank the beer, and got into a fight. The fight was aggravated by one of the men using a beer bottle as a weapon.¹⁹

FYPD officers working undercover made purchases of crack cocaine on the Star Food Mart premises in October and November of 2006 and March of 2007.²⁰ Uniformed officers also observed drugs sales and made drug arrests in January, July and October 2007.²¹ One narcotics officer stated, "This store is a known area for the illegal sales of narcotics."²²

There were three reported arrests for solicitation of prostitution on the premises.²³ Two of the arrests in March 2007 were made after Star Food Mart was closed, but the June 2007 arrest was made during business hours in the Star Food Mart parking lot.

c. Individuals Who Frequent Star Food Mart

An individual named Lawrence Terrell was arrested four times for consuming alcohol on Respondent's premises from July 2006 to October 2007.²⁴

Kerry Reliford was arrested for a narcotics sale on the premises in March 2007.²⁵ In the course of the narcotics sale, Mr. Reliford had assured the undercover officers, "I work here." Mr. Reliford is also identified as, or identified himself to police as, a Star Food Mart employee in reports made in July and October 2006.²⁶ In July 2006, Mr. Reliford told police in relation to a theft report that he worked "at the Fina Station and saw the offense occur."²⁷ In October 2006, officers responded to a theft call at Star Food Mart initiated by Mr. Mohan. The suspect had stolen a beer from the store. Kerry Reliford is listed as an employee in the report, and Mr.

¹⁹ Fort Worth Exhibit A, Tab 21, Report 06-133148; Fort Worth Exhibit A, Tab 8, Report 07-120205.

²⁰ Fort Worth Exhibit A, Tab 15, Report 06-125229, Report 06-135409, & Report 07-37107.

²¹ Fort Worth Exhibit A, Tab 15, Report 07-7748; Tab 6, Report 07-86944 & Report 07-117025.

²² Fort Worth Exhibit A, Tab 15, Report 06-125229

²³ Fort Worth Exhibit A, Tab 16, Report 07-33839; Fort Worth Exhibit B, Tab 4, Report 07-68451.

²⁴ Fort Worth Exhibit A, Tab 24, Report 06-75749 & Report 07-25897; Tab 13, Report 07-128406; Fort Worth Exhibit B, Tab 5, Report 07-71061.

²⁵ Fort Worth Exhibit A, Tab 15, Report 07-37107. A Darren Reliford was arrested for sale of narcotics on the premises in November 2006. Fort Worth Exhibit A, Tab 15, Report 06-135409.

²⁶ Fort Worth Exhibit A, Tab 25, Report 06-80354 & Report 06-116425.

²⁷ Fort Worth Exhibit A, Tab 25, Report 06-80354.

Mohan told police he and Mr. Reliford had tried to detain the suspect.²⁸

C. Respondent's Evidence

Respondent Shashi Chauhan Tanwar and her husband Singh Mohan testified.

1. Shashi Chauhan Tanwar

Respondent is the permittee. Respondent purchased the business on February 17, 2006, and her license and permit were issued in May 2006. She was not aware of the character of the neighborhood and the homeless problem in the area when she purchased the location, although she knew there were homeless shelters in the neighborhood. Respondent testified Star Food Market earns 70% of its income from alcohol sales. Respondent is not at the store every day, but is there "sometimes." She was last at the premises two days before the hearing for about four or five hours. Respondent was unaware of Officer Adcock's or Officer Loera's visits to the store.

Respondent agreed that the homeless are a problem in the area and are drawn by the various shelters in the neighborhood. The shelters are within walking distance of Star Food Market and the TxDOT property. Respondent testified the activity on the TxDOT property affects her business. She has seen people sleeping and congregating under "the tree" for two years. Respondent stated she does not own or control the TxDOT property and, from the counter in the store, cannot see the TxDOT property. She does not believe she should be responsible for what happens there.

When Respondent is working, she learns that people are loitering or trespassing by seeing them on the premises or by customer complaints of begging. Respondent first tries to go outside and order the person to leave, and then calls the police. Respondent acknowledged that most of the CFS made by Star Food Market employees were made after Star Food Market received the protest letter. Respondent testified that she does not allow people to consume alcohol on the

premises. It is illegal and might discourage legitimate business. Signs²⁹ are posted to make the prohibition clear. Star Food Market also has signs prohibiting loitering and consumption on the premises.³⁰ Respondent, however, denied she had ever seen someone purchase alcohol, step outside the door and start drinking.

Respondent was referred to an incident on June 4, 2006. Fort Worth police officers responded to a criminal mischief call at Star Market initiated by Respondent. The suspect had been disruptive in the store, stolen a package of bologna, and, on exiting the store, had thrown rocks at the store window and a vehicle. The suspect left the scene.³¹ Respondent testified it took the police 45 minutes to arrive.

Respondent testified that she and the store employees had seller-server certificates, as of August 7, 2007.³² Respondent has not received a citation for sale of alcohol to minors or for sale of alcohol to an intoxicated person.³³ Respondent was referred to the incident on July 28, 2007,³⁴ during which Officer Loera was on the premises and observed an intoxicated suspect, Dixon Edwards, carrying boxes around the store. Respondent explained that Mr. Edwards mows the grass at Star Food Mart for cash and is an independent contractor. Respondent has never seen Mr. Edwards intoxicated nor has he appeared at Star Food Mart to mow while intoxicated.

2. Singh Mohan

Mr. Mohan is Respondent's husband and the Star Food Market manager. He works at Star Food Market daily. The store opens at "approximately, sometimes" 8:00 a.m. and closes at 9:00 or 9:30 p.m. There are no set store hours. His son works at the store without compensation and there are no other employees. He stated that he could not run the store without alcohol sales.

²⁹ Respondent's Exhibit #2.

³⁰ Respondent's Exhibits #1 & 3.

³¹ Fort Worth Exhibit A, Tab 26, Report 06-64118.

³² Respondent's Exhibits #10 & 23.

³³ Respondent's TABC history shows four written warnings: failure to post a required sign, August 10, 2006; place or manner gambling electronic devices, October 20, 2006; sale to an obviously intoxicated person, October 20, 2006; place or manner gambling electronic devices, January 24, 2007. Fort Worth Exhibit A, Tab 2, TABC Commission History of Star Food Market.

³⁴ Fort Worth Exhibit A, Tab 5, Report 07-88761.

Mr. Mohan stated that loiterers, panhandlers, or drunks are asked to leave the premises, and if they fail to leave, the police are called. According to Mr. Mohan, problems with loitering and the like are recurring but infrequent. Mr. Mohan usually becomes aware of a problem by seeing it personally or by a customer complaint. Star Food Market has an interior surveillance camera to detect theft.³⁵ Mr. Mohan asserted that most of the problems on Star Food Market property are caused by persons who originally congregated on the TxDOT property. They gather under the trees which are located on the north and west of the TxDOT land.

Mr. Mohan stated that more police, or more police involvement, are needed to deal with the problems at the Star Food Mart locale. According to Mr. Mohan, the police are too busy and, when called, either do not appear, or appear too late, or refuse to jail persistent nuisances. Mr. Mohan stated that some of the persons who receive loitering or similar tickets from the police are very unconcerned and assert they will not pay the ticket. Mr. Mohan stated that the trees on the TxDOT property need to be removed because that is where people congregate all day.

Mr. Mohan acknowledged that FWPD have approached him and told him that Star Food Market has to change its way of doing business. The officer suggested more effective means of controlling the outside premises, such as outside video cameras and removing the payphone. Even though Mr. Mohan cannot see the payphone from the counter, he does not think exterior cameras would be of help. Mr. Mohan stated that he cannot allow customers to use the store phone as that line is dedicated to store computer use, so all he can offer customers is the payphone. Mr. Mohan stated that, at one meeting, the officer suggested that Star Food Market employees should call in all problems around the premises and on TxDOT. Mr. Mohan stated that they "do their best" to be aware of what is happening on the premises and, if they know something is wrong, they will call the police. Mr. Mohan says he cannot afford a security person after hours, but noted that the store does have a burglar alarm. Mr. Mohan stated that he goes outside the premises to inspect when he can.

³⁵ Respondent's Exhibit 4.

Mr. Mohan asserted that, if the Star Food Market permit is denied, the problems in the area will continue. Mr. Mohan denied "playing favorites" and allowing some persons to loiter and requesting the police to remove others. Mr. Mohan knows and recognizes regular customers, but said that many people who come into Star Food Mart are not regulars. Sometimes he knows those who are troublemakers but sometimes he does not. Mr. Mohan blames the troubles at Star Food Market on drug dealers and the homeless. When asked why these people come to Star Food Market, Mr. Mohan replied that the store is in walking distance of the homeless shelters. He agreed, moreover, that the sale of alcohol contributes at least in part to the problem.

Mr. Mohan was questioned concerning the various crimes submitted by the FWPDP and what steps Star Food Mart takes to deal with them. Mr. Mohan stated he was the complaining witness in numerous reports offered by FWPDP³⁶ requesting FWPDP to remove loiterers or deal with intoxicated persons. Mr. Mohan described the procedure required to prosecute a criminal trespass. First, the individual is warned and issued a ticket by the police. Mr. Mohan receives a copy of the ticket to present to the police when he has to call a second time on the same individual. The individual is then arrested. Mr. Mohan noted several of the reports offered by the Fort Worth police describe persons meeting or loitering on the TxDOT property.³⁷ Mr. Mohan stated this was off Star Food Market premises, and he does not keep an eye on the TxDOT property and does not tell people on that property what to do.

Mr. Mohan testified that drug activity takes place inside Star Food Mart at what Mr. Mohan called the "gambling machine." The drug dealer will play the game, and the buyer will approach him and whisper something. The dealer and the drug customer will then leave the store to consummate the deal. Mr. Mohan states that, when he sees this, he calls the police.

Mr. Mohan was not present during the prostitution arrest outside Star Food Market after the store had closed. He said he could not have anticipated this if the store was closed. Mr. Mohan stated that he was not aware of the second prostitution arrest made by Fort Worth police

³⁶ See, e.g., Fort Worth Exhibit B, Tab 7, Report 07-77912; Fort Worth Exhibit A, Tab 19, Report 07-58325.

³⁷ See, e.g., Fort Worth Exhibit B, Tab 6, Report 07-66627 & Report 07-67312.

on the Star Food Mart premises June 11, 2007.³⁸ Mr. Mohan denied knowing the woman and stated he was not aware she was on the premises or that she was soliciting. If he had known, he would have called the police.

Mr. Mohan described how he was once assaulted by a customer on November 2, 2007. Mr. Mohan called the police after he had been assaulted by the suspect inside the premises when he refused to sell the suspect beer. Mr. Mohan told the police he had sold the suspect beer twice earlier in the day and refused to sell him any more.³⁹

Mr. Mohan explained that Ronald Williams, who Officer Loera had identified as an employee of Star Food Mart, was not, in fact, an employee. Mr. Mohan testified he did not know Ronald Williams. Mr. Mohan identified Ad Abdul, who told Officer Lorea that Mr. Williams worked at Star Food Mart occasionally, as a nephew who works as a clerk but is paid in cash.⁴⁰

Mr. Mohan was referred to a police report describing an arrest of a man for public urination on the Star Food Mart premises.⁴¹ Mr. Mohan stated he was not aware the man was on the premises or what he was doing. If he had known, he would have called the police. Mr. Mohan stated he did once catch someone urinating on the building and he called the police. He was not aware of other instances of public urination on the Star Food Mart premises which had led to arrests.⁴² Mr. Mohan was asked about a police report of a public intoxication arrest of a man "walking around the parking lot" of Star Food Mart.⁴³ Mr. Mohan stated he was not sure he was aware the man was on the premises.

³⁸ Fort Worth Exhibit B, Tab 4, Report 07-68451.

³⁹ Fort Worth Exhibit A, Tab 10, Report 07-131126.

⁴⁰ Fort Worth Exhibit B, Tab 3, Report 08-43563.

⁴¹ Fort Worth Exhibit B, Tab 5, Report 07-71061.

⁴² Fort Worth Exhibit A, Tab 11, Report 07-83478 & Report 07-133131.

⁴³ Fort Worth Exhibit B, Tab 6, Report 07-72404.

Mr. Mohan was referred to the police report⁴⁴ of January 7, 2007, wherein he was quoted as saying "most of my customers" were habitual drunkards. Mr. Mohan asserted the officer said he should not sell to "homeless people," not "habitual drunkard."

Mr. Mohan testified that Dixon Edwards mowed the grass at Star Food Mart and was paid in cash. Mr. Mohan admitted he knew Kelly Reliford but denied that Mr. Reliford was a Star Food Mart employee. Mr. Mohan was referred to the narcotics violation involving Mr. Reliford. Mr. Mohan described Mr. Reliford as a regular customer, who "plays the game-machine all the time." Mr. Mohan did not, however, suspect drug activity with respect to Mr. Reliford.

III. ARGUMENTS & ANALYSIS

A. Applicable Law

Protestants bear the burden of proof in this case.⁴⁵ The Commission may refuse to renew a permit if "the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency."⁴⁶ The Commission has determined that a number of offenses⁴⁷ may constitute a "place or manner" violation.⁴⁸ Protestants would have to show:

- A violation of the criminal code;

By Respondent in the course of conducting its alcoholic beverage business or by any person on Respondent's licensed premises; and

⁴⁴ Fort Worth Exhibit A, Tab 20, Report 07-2452.

⁴⁵ SOAH Rule § 155.41(b), 1 TEX. ADMIN. CODE § 155.41(b).

⁴⁶ § 11.46(a)(8) of the Code.

⁴⁷ Offenses to which the rule apply are any assaultive offense; any arson; criminal mischief, property damage, or destruction offense; any theft offense; any fraud offense; any disorderly conduct or related offenses; any public indecency offense; any weapons offense; and any narcotics related offense. 16 TEX. ADMIN. CODE § 35.31(c)(4), (5), (6), (7), (11), (12), (13), & (15).

⁴⁸ *Id.* § 35.31(a) & (d).

- Respondent knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.⁴⁹

Generally, to deny a permit to a qualified applicant, some "unusual condition or situation" must be shown so as to justify a finding that the place or manner in which the applicant may conduct his business warrants a denying renewal of a permit.⁵⁰ The evidence concerning the unusual condition or situation must be more than mere conclusions.⁵¹ The Code does not define how the place or manner in which a business might be operated would justify a denying renewal of a permit; there is no set formula.⁵²

B. Protestant Fort Worth Police's Arguments

FWPD argued that the location of Star Food Mart is detrimental to general welfare, health, peace, morals, and safety of the people because of its proximity of the homeless shelters in the Lancaster corridor and the consequent availability of alcohol to a population with a significant proportion of alcoholics. FWPD has little sympathy for Respondent's claim that she purchased the premises without inspecting the neighborhood and becoming aware of the existing population the store would serve and the problems she would face. FWPD asserted that Respondent had a responsibility to investigate the store before she purchased it and should not be afforded any leniency.

Second, FWPD noted that from May 2006 to July 2007, there were 16 custodial arrests on the Star Food Mart premises, and these arrests were not the result of CFS by Respondent or her employees. FWPD argued that many of the CFS and offenses documented in the record took place on Respondent's premises. FWPD, in its argument, referred specifically to an incident on November 5, 2007, in which Mr. Mohan was found to be selling counterfeit Nike caps. FWPD argued that Respondent violated the Penal Code by offering the caps for sale when Mr. Mohan

⁴⁹ 16 TEX. ADMIN. CODE § 35.31(b).

⁵⁰ *Texas Alcoholic Beverage Com'n v. Mikulenska*, 510 S.W.2d 616, 619 (Tex. Civ. App. -- San Antonio 1974, no writ); *Elliott v. Dawson*, 473 S.W.2d 668, 670 (Tex. Civ. App. -- Houston [1st Dist.] 1971, no writ).

⁵¹ *In re Simonton Gin, Inc.*, 616 S.W.2d 274, 276 (Tex. Civ. App.--Houston [1st Dist.] 1981, no writ).

⁵² *Brantley v. Texas Alcoholic Beverage Com'n*, 1 S.W.3d 343, 347 (Tex. App.-- Texarkana 1999, no writ); *see, e.g., Helms v. Texas Alcoholic Beverage Com'n*, 700 S.W.2d 607, 611 (Tex. App.-- Corpus Christi 1985, no writ); *Ex parte Velasco*, 225 S.W.2d 921, 923 (Tex. Civ. App.-- Eastland 1949, no writ).

should have known they were counterfeit. FWPD cited this as an example of the "careless and detrimental" manner in which Respondent conducts her business. Respondent argued that, since Mr. Mohan did not know the caps were fakes, FWPD did not prove "Respondent intended to sell counterfeit items." FWPD calls this pleading "ignorance as a defense." The Nike caps investigation does not represent an offense committed by Respondent or her employees. The officer investigating the caps did not arrest Mr. Mohan or cite him. Instead the officer confiscated the caps and submitted a report "for further investigation."⁵³ The record does not show that any further official action was taken.⁵⁴

Third, FWPD argued that Respondent as a license holder has a responsibility that extends beyond the premises. Merely making a call for service while an offense is being committed (which Respondent refers to as "self-help") is not, in FWPD's opinion, sufficient to prevent offenses on the premises. FWPD asserted the Code requires Respondent to exercise reasonable care to be aware of what is happening on the premises and take reasonable steps to prevent offenses. FWPD argued that the CFS made by Respondent and her employees were mainly for self-protection and not to prevent offenses. The volume of calls expends police resources for matters that Respondent could prevent. FWPD argued that Respondent could install a better security system, install more lights, install fencing and gates, and emulate what the businesses in the area do to secure their property. FWPD also suggested that Respondent could remove the outside payphone which it said is used for drug sales and prostitution as well as by offenders who harass the police by calling in false emergencies.

C. Respondent's Arguments

Respondent blamed three existing conditions for the alcohol problem in the neighborhood. First, the TxDOT property attracts the homeless who gather to drink there. Second, A-1 and other retailers also sell alcohol in the locality which then is consumed on the TxDOT property. As Respondent sees the issue, the homeless then migrate from the TxDOT land to the Star Food Mart premises to beg money for more alcohol from Respondent's

⁵³ Fort Worth Exhibit A, Tab 7, Report 07-132194.

⁵⁴ Similarly, the "habitual drunkard" incident did not lead to any arrest by FWPD or censure by the Commission.

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customers. Third, Respondent faults FWPD. The criminal trespass "warning" system described by Mr. Mohan makes the situation worse because loiterers are not arrested for a first offense. Respondent asserted that the police officer's response time is too slow. Finally, Respondent says that the Fort Worth police need to maintain a "visible and continual presence" on the TxDOT property.

Respondent made three main arguments. First, Respondent acted in a manner approved by the police officers who testified in the hearing: her employees request a troublemaker to leave and then call the police. This accounts for the large number of CFS made by Respondent. Second, Respondent asserted that many incidents reflected in FWPD evidence occurred off premises for which Respondent should not be held responsible. Third, the record shows that Respondent was the victim in most of the incidents which occurred on the premises.

Respondent denied that FWPD proved that Dixon Edwards or Kerry Reliford were "employees" of Respondent. Respondent asserted that Mr. Edwards was an independent contractor and that there was no evidence that Mr. Reliford was ever hired, compensated, or controlled by Respondent. Respondent also argued that Protestant did not show that Dixon Edwards or Kerry Reliford committed crimes while in the course of conducting Respondent's alcoholic beverage business, because neither Mr. Edwards nor Mr. Reliford were selling alcoholic beverages when they allegedly committed their crimes.

Respondent asserted that 18 of the alleged offenses documented by FWPD did not occur on the Star Food Mart premises or that it is not clear where the offenses occurred. Respondent analyzed the record with respect to the various criminal offenses cited by FWPD and argues that Respondent's employees made most of the CFS for each category of offense, and, consequently, Respondent and her employees have done all that the FWPD officers said she should do.

With respect to public intoxication, Respondent noted the business has never been cited for sale to an intoxicated person. Respondent argued there were only four instances of public intoxication which occurred on the premises that were not called in by Respondent. Respondent argued that her employees are seller-server certified and that she has posted policies prohibiting

sales to intoxicated persons. Respondent says her employees cannot be expected to anticipate public intoxication with so few incidents over two years.

Respondent asserted that nine incidents of consumption of alcohol occurred on the premises which were not reported by her employees. Respondent noted the business has never been cited for allowing consumption on the premises. Star Food Mart has signs posted prohibiting consumption on the premises. Respondent pointed out that FWPD only identified one incident in which Respondent should have known about consumption on the premises. That incident was the event during which Officer Loera and Ronald Williams observed three individuals consuming alcohol on the premises.

With regard to each of the categories of crimes, Respondent asserted that FWPD has failed to show, in most instances, that the offense took place on the premises. Respondent argued that where FWPD has shown the incident took place on the premises, it failed to show that Respondent knew or should have known of the incident. Finally, Respondent noted that, since it made CFS concerning each type of crime Protestant cannot prove that Respondent did not take reasonable steps to prevent the offense.

It is true that the four police officers testified that Respondent and her employees should call the police to deal with problems at Star Food Mart. The record reflects that CFS originating from Star Food Mart have increased since the protest. CFS are not, however, the only reasonable steps to prevent on premises consumption that Respondent could or should take. Officer Coulter suggested Respondent take responsibility for its surroundings and accountability for its premises. Officer Crim opined it was the Star Food Mar's duty to recognize what is happening outside on the premises and respond to the situation. In Officer Adcock's opinion, Respondent lost control of the premises.

D. Analysis**1. The Place Where Respondent Conducts her Business**

An "unusual condition or situation" exists in the neighborhood in which Respondent conducts her business.⁵⁵ The Salvation Army shelter and the other shelters in the area near the Star Food Mart care for a homeless population of over 4,000, many with an alcohol addiction. Officials from local charities report that their clientele get their alcohol from Star Food Mart. Officer Coulter and Officer Crim opined that, based upon their observations, the majority of alcohol purchased in the area is purchased at Star Food Mart. Respondent and Mr. Mohan agreed that a large part of the problem stems from the presence of the homeless in the area. Mr. Mohan stated these people come to Star Food Market because it is in walking distance and that the sale of alcohol is a part of the problem. Officer Loera stated that one of the primary complaints concerning Star Food Mart is the effect of alcohol on the neighborhood. Mr. Hammack described those "secondary effects:" his family is "bombarded every day" by the homeless and their alcohol; he has to pick up empty bottles every day and run off persons who are urinating in his yard; he has made numerous complaints to the police about the fighting, drinking, and public intoxication. He believed the numbers of homeless are increasing and that alcohol makes it worse.

Ms. Brewer observed that alcohol sales, especially fortified alcohol and single 40-ounce bottles, are primarily made to chronic alcoholics who are sheltered at the local agencies. Alcohol in the area creates severe problems: trash, public intoxication and public urination. Mr. Gallant observed that the sale of alcohol in 40-ounce bottles leads to bottles on the ground and broken glass. The neighborhood association has hired people to clean the neighborhood, sponsored a "bottle bounty" in an attempt to clean up the bottles, and sponsored an ordinance requiring the sales of cans, rather than bottles, to reduce the trash and the threat of broken glass.

⁵⁵ *Texas Alcoholic Beverage Com'n v. Mikulenska*, 510 S.W.2d 616, 619 (Tex. Civ. App. -- San Antonio 1974, no writ); *Elliott v. Dawson*, 473 S.W.2d 668, 670 (Tex. Civ. App. -- Houston [1st Dist.] 1971, no writ).

The existence of the large homeless population in the area immediately surrounding Star Food Mart is a fact.⁵⁶ The problem that population presents, when combined with the sale of alcohol, is unique and unusual.⁵⁷ The experience of the A-1 store has shown that the reduction of alcohol sales in this neighborhood can have a positive effect and can reduce crime and the secondary effects of alcohol.

2. The Manner in which Respondent Conducts Her Business

Both Officer Coulter and Officer Crim testified that Star Food Mart was selective in its relationships with loiterers. The record demonstrates that the clerks on duty were willing to allow certain persons to remain on the premises or return to the premises over and over again, even if those persons had questionable habits, associations or pastimes. For example, Kerry Reliford was on the premises a great deal of time. During his testimony Mr. Mohan uttered a friendly laugh when he acknowledged knowing Mr. Reliford. Although Mr. Mohan testified Mr. Reliford was not a Respondent's employee, Mr. Mohan described to police on a CFS how Mr. Reliford helped him detain a beer thief. In that report, someone identified Mr. Reliford as Respondent's employee. Mr. Reliford aided Mr. Mohan with identifying a second thief from the store. Mr. Reliford also dealt cocaine on the premises.

Another individual, Lawrence Terrell, was arrested four times between July 2006 and October 2007 for consuming alcohol on Respondent's premises. Mr. Mohan testified that Dixon Edwards mowed the grass at Star Food Mart and was paid in cash. Nevertheless, Mr. Edwards was observed carrying boxes around the store and was found to be intoxicated by an investigating officer.

Mr. Mohan was assaulted by a customer because Mr. Mohan would not sell him a beer. The reason for Mr. Mohan's refusal was that Mr. Mohan had sold the customer beer twice previously that day, and the customer was intoxicated. In one instance, an officer found a

⁵⁶ *In re Simonton Gin, Inc.*, 616 S.W.2d 274, 276 (Tex. Civ. App.--Houston [1st Dist.] 1981, no writ).

⁵⁷ *Bavarian Properties, Inc., d/b/a Club Legends v. TABC*, 870 S.W.2d 686, 698-09 (Tex. App. Fort Worth 1994, no writ).

suspect passed out on the floor of the Star Market near the beer cooler.⁵⁸ In a little discussed incident, on October 8, 2006, an officer responded to Star Market and learned that five unknown males had broken into a coin operated machine inside the store and stolen \$60-70. In the course of the investigation, Dhiraj Tanwar, Respondent's son, told police he had observed one of the five, "approximately 11 yrs. old" "drinking from a beer can in the back of the store."⁵⁹

Mr. Mohan testified that Star Food Mart maintained a "gambling machine" where drug activity took place. The Fort Worth police observed that pattern in practice, on October 1, 2007. The machine was described as a "three line machine," which the officer knew "from personal experience" was what drug dealers did as a "cover."⁶⁰ Respondent was, in fact, cited by the Commission for possession of gambling electronic devices on October 20, 2006 and January 24, 2007. Although Mr. Mohan testified that when he saw this type of activity he called the police, the October 1, 2007, was observed by a Fort Worth officer in full uniform and not called in by Mr. Mohan or any other Star Food Mart employee.

The record demonstrates that characters such as Mr. Reliford were not forced to leave Star Food Mart, but were tolerated. Customers were sold alcohol to the point of intoxication and only then required to leave. A gambling machine remained on the premises as cover for drug dealers even though Respondent was cited by the Commission as late as October 2007 for possession of such a device. Other persons were paid cash for odd jobs and were free to remain at Star Food Mart and spend their earnings on alcohol. According to Respondent, neither Mr. Dixon nor Mr. Williams were employees, but the jobs police officers observed them performing, carrying boxes and sweeping up.

These crimes took place over a sustained and significant period of time. The record demonstrates that Respondent and her employees should have known these activities were taking place. The record is bereft of evidence that Respondent took any reasonable steps to stop or avoid future violations. For example, if the gambling machine was used by drug dealers and was

⁵⁸ Fort Worth Exhibit A, Tab 19, Report 06-82547.

⁵⁹ Fort Worth Exhibit A, Tab 23, Report 06-117586.

⁶⁰ Fort Worth Exhibit A, Tab 6, Report 07-117025.

a subject of two citations by the Commission's agents, it simply could have been removed. Lawrence Terrell, arrested four times for consuming alcohol on the premises, and others were sold alcohol to the point of intoxication and allowed to consume the alcohol on the premises.

Respondent's original license expired on May 24, 2007, and FWPD's protest letter was submitted in September 2007. Ten arrests were made at Star Food Mart for persons consuming alcohol on the premises, most of them in 2007. Sixteen persons were cited for consuming alcohol on the premises from September to December 2007 in violation of a Fort Worth ordinance. Six arrests were made for public intoxication on the premises from July 2006 to September 2007. These offenses all took place on the Star Food Mart premises.

Respondent knew or should have known that these incidents took place and should know what is happening on the premises. Respondent has an interior video camera to prevent thefts but does not have exterior video feeds to prevent on-premises drinking. Although Respondent and her employees are seller-server certified, Respondent has a published policy on sales to intoxicated persons, and Respondent has signs prohibiting consumption on the premises, Respondent seeks to prevent on-premises drinking based upon what can be seen from the inside counter, what is reported to the clerk on duty by customers, and what might be observed during a sporadic survey. Respondent makes no policy of affirmative, pre-emptive actions.

3. Conclusion & Recommendation

The place in which Star Food Mart is located and the manner in which Respondent operates her business warrants denying renewal of Respondent's permit the based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Renewal of Respondent's license and permit should be denied.

IV. FINDINGS OF FACT

Shashi Chauhan Tanwar (Respondent) opened Star Food Mart in the spring of 2006.

2. Respondent was issued a wine only package store permit Q629007 and a beer retailer's off-premise license BF629008 on May 25, 2006.
3. Star Food Mart is located at 1799 East Lancaster, Fort Worth, Tarrant County, Texas.
4. The premises are at the intersection of Riverside and Lancaster. Star Food Mart is located in the northwest corner of the intersection and a business called A-1 (a small convenience store) is located in the northeast Corner.
5. Property owned by Texas Department of Transportation (TxDOT) is to the north of Star Food Mart, bounded on the east by Riverside, on the south by Lancaster, on the north by Interstate Highway 30, and on the west by Highway 287.
6. Over 4,000 homeless people live in the neighborhood where Respondent's premises is located.
7. Two night shelters serving the homeless operate within a few blocks of Respondent's premises.
8. Many of those homeless people are alcoholics and also have mental health problems arising from alcohol abuse.
9. Respondent sells alcohol in single, 40-ounce bottles.
10. Respondent's premises' immediate neighborhood has a high incidence of public intoxication, public drinking, and public urination.
11. Respondent's premises' immediate neighborhood suffers from garbage and trash in the form of empty beer bottles and glass from broken beer bottles.
12. Homeless persons in Respondent's premises' immediate neighborhood purchase a great portion of the alcohol they drink from Respondent.
13. The A-1 store, located across Riverside from Star Food Mart, lost its alcoholic beverage permit in 2007.

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14. A-1 reduced its calls for police service (CFS) by 70% following the removal of alcohol from the premises.
15. CFS at Star Food Mart increased by 15% during the 2006-2007 period.
16. The homeless population in the area immediately surrounding Star Food Mart, when combined with the sale of alcohol, is a unique and unusual condition.
17. During May 1, 2006 to June 1, 2007, there were 260 CFS at Star Food Mart.
 - a. 74 calls were made from the payphone on Star Food Mart's premises.
 - b. 72 calls were made from Star Food Mart's business telephone.
 - c. 22 were made by Protestant Suzette Watkins.
18. During June 2, 2007 to July 7, 2007, there were 47 CFS at Star Food Mart.
 - a. 8 calls were made from Star Food Mart.
 - b. 6 were made from the payphone.
 - c. 6 were made by Ms. Watkins.
19. During July 7, 2007 to January 2, 2008, there were 172 CFS at Star Food Mart.
 - a. 34 calls were made from the payphone.
 - b. 18 were made from Star Food Mart.
 - c. 16 were made by Ms. Watkins.
20. Ten arrests were made at Star Food Mart for persons consuming alcohol on the premises.
21. Sixteen persons were cited for consuming alcohol on the Star Food Mart premises and in violation of the Fort Worth ordinance prohibiting consumption of alcohol within 1000 feet of a homeless shelter.
22. Six arrests were made for public intoxication on the premises.

23. A number of persons were arrested for urinating on the premises building.

Fort Worth police officers working undercover have made purchases of crack cocaine on the Star Food Mart premises on three occasions.

25. Uniformed officers have observed drugs sales on the premises and made drug arrests on three occasions.
26. Respondent or her employees allow persons who have been arrested for consumption of alcohol on the premises to continue to frequent Star Food Mart.
27. Respondent or her employees allow persons who deal drugs on the premises to continue to frequent Star Food Mart.
28. Respondent or her employees knew or should have known persons were consuming alcohol on the premises, were publicly intoxicated on the premises, were publicly urinating on the premises building, or were selling drugs on the premises.
29. Respondent or her employees took no steps, aside from posting signs and making CFS, to prevent persons consuming alcohol on the premises, being publicly intoxicated on the premises, publicly urinating on the premises building, or selling drugs on the premises.

On February 8, 2008, Staff issued a notice of hearing notifying all parties that a hearing would be held on the application and protest and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.

- 31 On April 25, 2008, a public hearing was convened, before ALJ Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff did not appear at the hearing. Respondent appeared in person and through her counsel, Timothy E. Griffith. The City of Fort Worth Police Department appeared through its attorney, Deanna Jefferson Smith. The other Protestants appeared *pro se*. The hearing ended on April 25, 2008. The record closed on June 6, 2008.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2008).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2008).
4. The burden of proof that the place or manner in which the Respondent conducts its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency rests on the Protestants. 1 TEX. ADMIN. CODE § 155.41(b).
5. Based on the foregoing findings and conclusions, Star Food Mart is located in a place and operated in a manner which requires refusal of the renewal of the permits based upon the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

Signed August 4, 2008.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: SHASHI CHAUHAN TANWAR / STAR FOOD MART
SOAH DOCKET NUMBER: 458-08-1705
REFERRING AGENCY CASE: 568326

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS****ADMINISTRATIVE LAW JUDGE
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08/04/2008

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TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
MAYOR PRO TEM KATHLEEN HICKS,	§	
REPRESENTATIVE MARC VEASEY,	§	
NEAR EASTSIDE NEIGHBORHOOD	§	
ASSOCIATION, EASTSIDE SECTOR	§	
ALLIANCE, UNION GOSPEL MISSION OF	§	
FORT WORTH, DAY RESOURCE CENTER	§	
FOR THE HOMELESS, PAULO S	§	
PROPERTIES LLC, RIVERSIDE KENNEL,	§	
SANDERSON CREEK BONSAI, OFFICER E.	§	
B. ADCOCK, Protestants	§	
	§	
VS.	§	OF
	§	
RENEWAL APPLICATION OF	§	
SHASHI CHAUHAN TANWAR	§	
d/b/a STAR FOOD MART	§	
PERMIT NO(s).	§	
Q629007, Respondent	§	
	§	
TARRANT COUNTY, TEXAS	§	
(TABC CASE NO. 568326)	§	ADMINISTRATIVE HEARINGS

ORDER ADOPTING PROPOSAL OF DECISION

CAME ON FOR CONSIDERATION this 16th day of December, 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones. The hearing convened on April 25, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 4, 2008. The Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Exceptions and Reply to Exceptions were filed to which the Administrative Law Judge did not submit recommendations for changes or amendments to the Proposal for Decision.

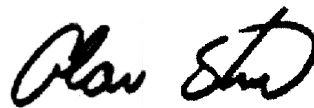
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that the renewal of Respondent's permit be **DENIED**.

This Order will become final and enforceable January 13 2009, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 16th day of December, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

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